Transcript for June 13, 2023 Lunch 'n Learn meeting

[This transcript was edited for accuracy and clarity.]

0:0:0.0 --> 0:0:7.930
Zavatsky, Drew (DES)
For this presentation of our meeting today, everyone other than the panel will be muted throughout.

[Slide #2] Welcome and thank you for joining us today. Our two panelists are Julie Aalberg, a DES Management Analyst, and Stacia Wasmundt, a DES Contract Specialist. They both work in our contracts and procurement Division and will be discussing their experiences with unbundling.

[Slide #3] A quick overview of who we are: DES is the state's lead procurement agency, we procure and manage over 200 statewide contracts with around 1500 vendors. We also conduct our own procurements and managed contracts for our own needs as all other agencies. And we're responsible for developing and implementing procurement policies and procedures for all state agencies in Washington.

[Slide #4] There are three sources for what we do in context of the supplier diversity policy. The first is our statue of intent, RW 39.26.005. The second is RCW 39.26.090, which lists the duties of our director, which includes promoting and encouraging and facilitating the purchase of goods and services from small- micro- and mini-businesses as well as minority and women owned businesses to the maximum extent practicable. Third, Executive Order 22-01, which is about equity in public contracting. It provides more guidance in what we are doing to achieve contracting equity; and we created a supplier diversity policy written in such a way that it is completely consistent with that executive order.

[Slide #6] Let's talk about the policy very briefly. It went into effect in April of this year. It's available online as is the Virtual Handbook. The policy is the "what" of what needs to be done in the space of supplier diversity and public spending for goods and services. How to do it is what the Virtual Handbook is all about, and the reason that we're here today is to talk about one of those pieces of the how to do it.

[Slide #7] They're about 10 supplier diversity tools that are listed here. They're basically all of the "C" sections of both the policy and the Handbook. What we are focused on today is #C-3 unbundling. The idea here is to open up the market to the – the market of public spending by state agencies to small and veteran owned businesses.

[Slide #8] OK, so let's talk about the "what" and the "why." The Handbook contains a definition of unbundling. That's what you see here, and the idea is that if the state is going to purchase something that's large, think of it in terms of maybe a system to manage all the cases of an agency, whether it's the Department of Corrections, for example, or the Department of Health, and it needs to be a statewide system. You'll go out and purchase that system and it will be expensive, as you know, but because there are a lot of pieces of the system and about how complex a system it is, there are segments that can be broken out by either geographic area or category or type of activity for IT.

What are the types of service activity? First, the software itself; second, implementing the software, you know, loading it into existing state systems; third, Q&A for example; and fourth, project management.

All of these categories are associated with IT contracts, they are typical for a large IT project. Often, they can all be broken out, they won't always be performed by one vendor and the whole idea behind unbundling is it takes that one initiative and one purchase and makes it available to more than one vendor.

Why is this in focus now? Well, it's because the disparity study in 2019 told us that as a state we are not doing a good job with creating opportunities for many different vendors and businesses and in industries we need to do a better job and the basic idea is that we weren't giving fair access to state money to all businesses and the state of Washington. Currently, we're looking at how to improve spend there.

[Slide #9] In the Handbook we provide a worksheet for how to do unbundling, and it has been our experience, because we've been using this for the past approximately 2 years, that unbundling is not very difficult or time-consuming, and actually can be conducted using this worksheet in a very straightforward, and as it turns out, equitable way.

Now is the time when I want to introduce our practitioners. How are they using this worksheet and how are they doing unbundling?

0:7:16.570 --> 0:7:23.300
Aalberg, Julie (DES)
[Slide #10] First thank you for letting us share our experiences around unbundling with the ITPS contract, we learn lessons every day. We hope that this is a good example of this important work; one of our missions for the state and DES is to support and encourage participation from our Washington small, diverse, and veteran-owned businesses, to understand their concerns, and to remove roadblocks.

To help them to succeed and to meet this goal, we had to understand why unbundling made sense for ITPS; so we started to do research. This is definitely a team effort. There's lots of people involved from the top down and we've received lots of support for this.

[Slide #11] In the initial stages, we started to research and identify what was working and what really was insufficient and fair to all of our stakeholders, because fairness is what we were seeking - our goal. The current ITPS two-tier program has 12 categories and they're very broad, and so extensive research was conducted and our leadership, our ITPS Team, we listened, we partnered with community organizations and support those organizations on the ground. It's to support these businesses and we look for factors such as demand, spend, use and opportunity, and from listening to our stakeholders, it became clear that the current ITPS program was not adequate nor equitable.

To drive teams, we needed to support the goals of increasing fair participation – access – and we determined that there are clear reasons why we needed to unbundle and restructure the entire program.

Then we asked, what does is needed from the new program? How can we reach these goals?
Why weren't businesses participating in ITPS, and why were agencies frustrated?

We first went at the beginning in the development stage and did an RFI for all of the three areas: IT project management, IT development, and cyber security services. We were very direct and asking what were the barriers, where are your roadblocks? And if you're participating, what's your frustration?

The first RFI we had an amazing response.

I know for my IT development RFI I received over 200 pages of feedback which we definitely went through. That showed us that there was an interest and people wanted their voices to be heard. The second RFI, which is kind of unique and new for us, but worked very well, was right before we posted for solicitation. We went back out for a second time. Verified so in this RFI we posted our exhibits. We wanted them to see the progress we've made, that we had listened and that we were responding, but we were also open to whether you can still see barriers to contracting with the state? Do you still see where you would not have access to bidding on this program?

That RFI was really excellent for researching the unbundling issue because you think you're, you know, as a team believe "we hit the goal" but then we received some excellent feedback from all of our stakeholders, and we pivoted on some things and modified our approach and then we went out to solicitation.

[Slide #12] What did we learn about the nature of the ITPS two-tier program?

- It was very cumbersome.

- There was a lack of vetting.

- It was a self-certification process.

- Qualifications were not verified, and some were even purely recruiting firms that overcommitted and when purchasers went to them, they didn't have the staff availability.

- Agencies were going out looking for people and we knew for feedback from our small, diverse, and veteran-owned community that there were businesses out there that could supply this work and were more than willing to bid on the contract if we listened to how to unbundle it appropriately.

- We also realized that from the 700 available vendors, only 160 to 180 were actually receiving work.

It was very clear that although there were businesses that were participating, they weren't being seen or were underutilized because oftentimes purchasers were going with businesses they've always used, sometimes just because it's familiar, and there was no incentive to change.

There was also just frustration over the ITPS program, and we worked with the DES Procurement, Equity and Inclusion (PIE) team, and identified that there was a significant amount of businesses able to do the work.

It was also evident that there was not enough outreach to these communities. So we worked in partnership in communication and in education.

The last piece that was very difficult in this ITPS program – and another reason we needed to change it –

was agencies really found ITPS to be of minimal value because they had to do their own solicitation. There weren't awarded vendors and so we really knew that there was a need for change.

0:13:48.160 --> 0:13:56.950
Wasmundt, Stacia (DES)
[Slide #13] For diversity and equity goals, these are some of our overall key goals in our mission to encourage diversity and equity in all of our statewide contracts. First and foremost, we really want to encourage more participation from small and diverse businesses. We want more funds to go to these businesses.

Like Julie mentioned, we partnered with our PIE team at DES to help do this and respond to feedback that we've heard regarding barriers in participating in some of the contracts. Unbundling can really help with tailoring the services and goods to the smaller businesses. And I just want to state how much the PIE team really has been an integral part of our restructure process for ITPS in particular, they ensure that the businesses receive updates and they have the appropriate resources to help guide them through the solicitation process. That's been a great partnership throughout this whole time.

[Slide #14] So we are currently doing this with ITPS. We're working on two of the 12 categories of ITPS contracts right now.

What are some of the benefits of unbundling ITPS?

Again, more opportunities for Washington small, diverse, and certified veteran-owned businesses with ITPS. In particular, we have reserved awards, so those are dedicated awards, a dedicated number of awards for Washington small and certified veteran-owned businesses. Out of the total amount of awards that we're going to be giving out, we have reserved at least a certain percentage per category to give to those businesses in particular.

We also are incentivizing subcontracting, so we're requiring bidders to submit what's called the diverse business inclusion plan with their bid if they plan to use subcontractors for any time during the contract. And this includes questions about what percentage is going to go to each small, veteran business category on their diverse business subcontracting list and then bidders have planned to meet or exceed these goals, including their outreach.

We have improved the vetting process, so right now with our two-tier current ITPS program, it's just a self-certification process. The vendors mark off. You know what they can do and there's no vetting process, so for these unbundled solicitations, we added performance requirements: these are things that they have to meet throughout the year to continue with the contract and it's competitively solicited. So it goes through a whole evaluation process.

We also have more detailed spend analysis. Right now, with the current program, there's 12 categories. We can't find individual spend for each individual category since they're all bundled into one, so the spend of the entire program is almost $300 million a year. I'll get questions. Julie will get questions about how much spend does, you know IT development bring in per year. We don't have that information right now because it's all bundled into one. The unbundling will allow for more spend analysis for each individual category.

[Slide #15] This is the unbundling analysis worksheet we highlighted. The areas that relate to ITPS you can see there's more than enough purpose to unbundle this contract. It makes sense from seeing this visual, right?

For the geographical area, it's going to be statewide size and complexity, it's very complex. It's very large. All of these solicitations are going to be very large, split by category. We have two categories for it, project management and four categories.

Your IT development split by manufacturer, we expect two or more manufacturers.

These are robust solicitations, products and services because of the categories will have two or more services. So that's highlighted.

And then the last one, these are services-based contracts.

Now, the timing and delivery is not applicable but even if it was, we still have more than enough reason to go with the unbundling.

[Slide #16] From the original 12 categories based on ITPS demand, creating access, and building opportunity, we started out with four categories we identified to work on first.

0:18:33.540 --> 0:18:42.330
Aalberg, Julie (DES)
The first one that was put out for solicitation is IT project management that has two categories, which are project management and quality assurance. But under those categories are subcategories, so we have journeyman, senior, and expert. We're awarding on all the subcategories.

We have IT development, which came out within a couple weeks of that and they're both closed and that one included web development, application development, software tester and IT architect and all of those categories once again have subcategories that we will award on it.

This was how we targeted unbundling, is to provide opportunities within the category. So we broke the categories down, but then we broke them down to subcategory and so vendors are able to bid on one, two, three, four, however many categories that they wish. And if they only have a senior or an expert or a journey level, they can bid just on those levels. This makes it so all can participate. And of course, every day, as I said before, we're learning lessons.

We just closed the solicitation a few weeks ago. We received a robust number of bids for those. The next step is Information Cyber Security. We anticipate that to be released in the third quarter of 2023, IT Consulting in the fourth quarter of 2023 and we will continue to utilize this unbundling process.

You know, make best practices and to use continual quality assurance to make sure that we are meeting the needs of this state and their goals. So finally, communication – It was really called out that we needed to ensure everyone was aware of the opportunities. So from our partnership with community organizations with the PIE team, we have a dedicated ITPS web site and then we have of course WEBS, Contract Connection and we're always made ourselves available to answer questions. Thank you for letting us share this with you.

0:21:6.690 --> 0:21:9.380
Zavatsky, Drew (DES)
==[Slide #17 Questions]== Now we open it up to our audience. Go ahead and type any questions you have into chat, and then we'll have two helpers here. Well, I guess one thing we could put into chat, we will find the location of that unbundling analysis in the Handbook.

0:22:31.830 --> 0:22:34.380
Mroz, Zoe (DES)
==Question #1== I'll go with first one from Shannon. When you say unbundling, does it count? If it's two interagency agreements, what if one is an IA and one is a direct buy? How do we track all of this?

0:22:53.580 --> 0:23:1.780
Zavatsky, Drew (DES)
==Answer #1== Those are great questions. We'll have to think about them. We'll work on getting you a written response. It's looking like the lag time is going to be from two to four weeks after each of our Lunch and Learns. We will make them available on our website; if you go to the specific page for the supplier diversity policy, towards the bottom of that page is a resources tab and that's where the materials will be located. The materials will include the PowerPoint presentation, a transcript of this meeting, and the relevant Q&A's.

0:26:55.530 --> 0:27:2.470
Mroz, Zoe (DES)
==Question #2== Looks like Janelle, how do we as an agency assure that all of our subcontractors are counted towards our spend?

0:27:24.230 --> 0:27:26.360
Mora, Douglas (OMWBE)
==Answer #2== I think it was about what's counted towards your goals though.

0:27:28.760 --> 0:27:32.860
Zavatsky, Drew (DES)
How to record things so that they will be counted? Yes, subcontractors.

0:27:38.940 --> 0:28:2.150
Mora, Douglas (OMWBE)
And one of the presenters mentioned earlier about using that subcontractor inclusion plan, that's where primarily – and also, we are going to be implementing the Access Equity software application where you will be able to track your subcontractor spend more rigorously, thoroughly, and automatically. So stay tuned for that rollout.

0:28:8.530 --> 0:28:11.380
Mroz, Zoe (DES)
==Question #3== Looks like there's a follow up question about subcontractors. If a company declares that they have a subcontractor, can you go directly to that subcontractor and purchase from that subcontractor through the contract with the prime.

0:31:19.210 --> 0:31:35.750
Zavatsky, Drew (DES)

Answer #3 So it is the prime setting up a sort of marketplace where they're selling what the Subs have to offer to non-contract partner parties? We'll have to think more about the question. We'll work on getting you a written response.

0:32:54.560 --> 0:33:2.160
Mroz, Zoe (DES)
Question #4 We had one about does a solicitation that involves multiple awards per region or area meet the criteria for unbundling. I think the answer is maybe.

0:33:9.180 --> 0:33:21.50
Zavatsky, Drew (DES)
Answer #4 It may indeed be. That chart really helps too because – the Unbundling Analysis Worksheet that we showed earlier because it may be that multiple awards per geographic area would lead to a decision to unbundle. But if many of the other considerations that go into the unbundling decision are not favorable, then perhaps that one factor standing alone is insufficient. We are here to consult on all of these questions. By all means, feel free to reach out to us.

0:34:2.20 --> 0:34:15.60
Mroz, Zoe (DES)
In some cases, there's a risk associated with unbundling when procuring for a large IT system. For example, I unbundle one large procurement involving hardware, software and development services into their separate components. The risk is that if the final system encounters a technical issue problem, we have difficulty determining which vendor is responsible for the problem. Could you please advise how we might, how we can mitigate this risk?

0:34:33.310 --> 0:35:3.450
Zavatsky, Drew (DES)
Well, you know the categories that I gave before: software implementer, QA and then you know service and maintenance, tend to be the ways in which I've seen larger IT projects, not necessarily unbundled, but just it's been a sustainable division of labor by the marketplace, and almost all of them don't address the division between hardware and software. Maybe the implementer deals with that issue, but not always.

So in in a sense, I think the market has sort of determined that if there's going to be a division of Labor, it rarely has to do with the hardware side of things. And that's how I was interpreting the question. I was looking at that particularly because the problem that you indicated, which is that, oh, OK, something messes up down the line. It's really hard to unwind who was actually responsible for that issue, right?

So just from what little I know about the IT business models that are out there, as well as a couple of the conferences I went to pre-COVID that were in person, listening to what a lot of those sessions were about and what a lot of the practitioners in those sessions were talking about, they never talked about hardware. It was not the issue and it was because they weren't looking to, you know, it just was not what they were working on. It was all having to do with software and software implementation, so I think there's a good reason for that. [I'm not sure this answers the question.]

0:36:45.0 --> 0:36:51.580
Mroz, Zoe (DES)

Question #5 When unbundling to increase supplier diversity, do we the agency need to show/document the reason why the contract was unbundled?

0:37:6.510 --> 0:37:15.320
Zavatsky, Drew (DES)
Answer #5 Yeah, because after the grid in the Unbundling Analysis Worksheet it says to give the reasons for your decision to unbundle.

0:37:18.750 --> 0:37:24.690
Mroz, Zoe (DES)
And of course you can make your own unbundling worksheet, but something along the lines of documenting, yeah.

0:37:26.190 --> 0:38:8.450
Zavatsky, Drew (DES)
Yeah, part of the reason why it's really important to show your reasoning is that all of these decisions either to unbundle or not too unbundle can end up going under scrutiny later because as we all know, in a competitive environment, you know the I'll say this with fairness, those who were not chosen to work with the state may have issues with that.

0:38:14.380 --> 0:38:28.870
Mroz, Zoe (DES)
Question #6 Next one if I have a small order of $50,000 and a separate part out to a diverse vendor and now both orders fall under the direct buy limit, this may look it is like it's being separated to avoid competition.
Is this OK to do?

0:38:33.310 --> 0:38:43.750
Zavatsky, Drew (DES)
Answer #6 If you're acting in good faith, make your good faith arguments for why you acted and that's another reason why it's so important to show your work. I will say also that there are plenty of resources available. Such as the community of practice and talking to other practitioners. You can also talk to your assistant attorney general if the context is such that it might be really sensitive. Rarely does that happen, but just realize that you've got plenty of resources so that you're not doing something or making a decision on an island on your own.

0:39:39.390 --> 0:39:49.160
Mroz, Zoe (DES)
Question #7 We've got a related question to direct buy if we're following the intent of the direct buy policy and the dollar threshold of $30,000 or $40,000. When we look at the unbundling to create a greater reach to increase purchases from small diverse women and veteran businesses, are we able to utilize the $30 or $40,000 for each of the contractors as a result of the unbundling, perhaps that may be 3 contracts being procured for the same services for the same dollar amount. Is that an accurate way to interpret an unbundling approach?

That's an interesting question for me with the direct buy policy and repetitive purchasing.

0:40:27.870 --> 0:40:43.190
Zavatsky, Drew (DES)
Answer #7 I'm not quite sure of the answer to this question, but I am going to make a point here which is, you know in the question you said small, diverse and veterans right now understand something very clearly. When there was a slide earlier that talked about the unbundling. When you're unbundling, you're unbundling for the purpose of a small vendor, you're trying to find one or a diverse, small, veteran vendor.

0:41:4.760 --> 0:41:6.320
Mroz, Zoe (DES)
But veteran, small or veteran.

0:41:9.330 --> 0:41:9.710
Zavatsky, Drew (DES)
Thank you. The reason that we don't say the diverse piece is that "small" and "veteran" are content-neutral.

I-200 and RCW 49.60.400 basically said years ago that you cannot do a preference using a protected class. This policy is designed to provide preferences to something that is not a protected class. Small businesses are not a protected class, veteran-owned businesses are not a protected class. So you're completely OK using this preference for those two.

Now to the question. As Zoe was saying, we are still mulling over the intersection between repetitive purchases and unbundling, and we don't have a clear answer right now. The best I can give you right now is that we are working on it and actually, you know, this conversation helps motivate our timing. I'm going to promise to you that we will have Q&A's on our website in two to four weeks, with our answer.

0:42:47.60 --> 0:42:51.580
Mroz, Zoe (DES)
Question #8 Next question we've got, and we've got at least two more – we might have time for a couple more – if there is a possibility of unbundling in a contract, but the agency doesn't do so, what are the consequences if there are any?

0:43:7.10 --> 0:43:19.160
Zavatsky, Drew (DES)
Answer #8 The overall review that's coming is that all of an agency's efforts to achieve supplier diversity are being examined. This puts the review of an agency's compliance with the policy into context. Are we examining a situation where a single contract was not unbundled? What if that single contract was the only contract that your agency had for that year. Maybe the decision to not unbundle will be an issue. Or maybe it won't. It depends on the circumstances.

The issue may be "why didn't I unbundle?" If you unbundle all of your agency's other contracts the question may be why you did not do this one. There may be legitimate reasons to not unbundle. That shows the range of possibilities. Keep trying to apply the policy, and you probably will be unbundling a bunch of your contracts.

Question #9 0:44:28.650 --> 0:44:34.180
Mroz, Zoe (DES)

All right, looks like we've got a question from DOH. DOH buys many lab supplies under a NASPO contract with Fisher Scientific and VWR corporations that say they cultivate diverse suppliers. Does the agency get credit for buying the goods sold by Fisher or VWR that were sourced from smaller companies? Shouldn't we prefer the NASPO contract if it allows us lower prices and if we ordered from the manufacturer? We are told always to prefer the statewide contract, so undoing that thinking and habit will take some work.

0:45:40.110 --> 0:45:44.620
Mroz, Zoe (DES)
==Answer #9== The NASPO contract – the statewide contracts are not included in the scope of the supplier diversity policy. They are an exception from the requirements of supplier diversity, so that's one initial thought that I have. We're still – agencies are still encouraged to use statewide contracts. I don't think we're suggesting that you wouldn't use the statewide contracts that are available to you. Those are my initial thoughts. But again, we're taking all these questions down and we'll have a succinct answer provided in writing in a few weeks.
0:46:25.90 --> 0:46:27.520
Mora, Douglas (OMWBE)
If it makes you feel better, drew, that's the one I was looking at.

0:46:59.600 --> 0:47:20.720
Mroz, Zoe (DES)
I just wanted to acknowledge I see Will Taplin in the chat posting things about the direct buy policy, you know – well, something that I think we're talking about here in the policy team is – with all of our policies, when do we refresh them to align them appropriately with the supplier diversity policy. And that is one area where we'll need to update our direct buy policy to be very clear about gender neutral preferences.

0:47:36.690 --> 0:47:45.130
Mroz, Zoe (DES)
It looks like Shannon gave some more background on the question from the top of the Q&A. We've only got a couple minutes left, so we may need to wrap up and answer her question through our written responses.

0:47:58.820 --> 0:48:2.970
Zavatsky, Drew (DES)
Well, I want to thank everybody for joining us this afternoon. So it was excellent, as always, to hear your questions and I appreciate your patience with my fumbling around to give you answers, but we'll get you the better answers as we proceed. Next week is prebid conferences.